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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,805	02/05/2001	Barton F. Haynes	1579-548	4002

7590 09/25/2002
NIXON & VANDERHYE P.C.
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EXAMINER

STUCKER, JEFFREY J

ART UNIT PAPER NUMBER

1648

DATE MAILED: 09/25/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 8/2/02 & 8/14/02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-8 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-8 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claim 1, drawn to a vaccine comprising a peptide, classified in Class 424, subclass 207.1.

II. Claims 2-5, and 7, drawn to a polypeptide, classified in Class 530, subclass 350.

III. Claims 6 and 8, drawn to a nucleic acid, classified in Class 536, subclass 23.72.

The inventions are distinct, each from the other because of the following reasons:

The inventions of each of Groups I-III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are each distinct compositions that have no common structural features.

The claims of Groups I-III are drawn to multiple sequences. Each of the different sequences are independent and distinct inventions because no common structural or functional properties are shared. Accordingly, these sequences are each subject to restriction under 35 U.S.C. § 121. Regardless of the Group

elected, **Applicant is additionally required to elected a single sequence**, which if determined to be patentable, would also be patentably distinct from other sequences. This requirement is made under 1192 O.G. 68 Notice (November 19, 1996), as examination of more than one sequence in one application would result in an undue burden on the PTO.

Because these inventions are distinct for the reasons given above and have acquired separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is hereby advised of deficiencies in regards to compliance with the sequence rules. Appropriate correction is required in response to this Office Action. Failure to comply will be considered to be a non-responsive reply.

The specification and claims fail to adhere to the requirements of the sequence rules. Applicant must append SEQ ID Nos. to all mentions of specific sequences in the specification and the claims. See 37 CFR § 1.821(d). Referring to Table 3 in the claims does not comply with the sequence rules because when the claims discuss a sequence, reference must be made to the sequence

by use of the sequence identifier, preceded by "SEQ ID NO:" in the text of the claims. Further, Table 3 does not comply with the sequence rules as the disclosed sequences do not have SEQ ID NOs and the table is not legible.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Papers related this application may be submitted to Group 1648 by facsimile transmission. Papers should be faxed to Group 1648 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG (November 15, 1989).

The Group 1648 Fax numbers are: (703) 308-4242 and (703) 305-3014.

Unofficial communications may be faxed to: (703) 308-4426.

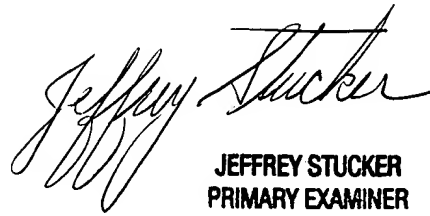
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Stucker whose telephone number is (703) 308-4237. The examiner can normally be reached Monday to Thursday from 7:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (703) 308-4027.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.



JEFFREY STUCKER
PRIMARY EXAMINER